IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.736 of 2000
Decided on: November 21, 2007

State of H.P. **…Appellant**

Versus

Arun Kumar @ Poga & ors. **…Respondents**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant : Mr. D.S. Nainta, Dy. Advocate General.

For the respondents : Mr. T.S. Chauhan, Advocate.

Surjit Singh, Judge (oral)

Heard and gone through the record.

2. Respondents were charged with and tried for offences punishable, under Section 147, 148, 323, 324 read with Section 149 of the Indian Penal Code, for allegedly forming an unlawful assembly with the common object of giving thrashing to PW-1 Surinder Kumar and in prosecution of the said common object, indulging in rioting and causing injuries to said Surinder Kumar by means of a knife and kicks and fist blows.

3. Trial Court acquitted all the respondents holding that the case was not proved beyond reasonable doubt. State has appealed against the order of acquittal.

4. I have heard the learned Deputy Advocate General and perused the record.

Whether reporters of the local papers may be allowed to see the judgment?

5. To prove the alleged occurrence, prosecution examined Surinder Kumar, the alleged victim of the offence as PW-1 and one Bhagi Rath (PW-2), who allegedly saw the occurrence. Bhagi Rath (PW-2) did not support the prosecution version. Surinder Kumar (PW-1) though testified that he was assaulted by all the five respondents and one of them, namely respondent Anil Kumar, hit him on the face just below right eye with a knife and other respondents kicked and fisticuffed him, yet the doctor did not find any injury having been caused by fist or kick blows, even though the injured was subjected to medico legal examination within a few hours of the alleged occurrence. The only injury, other than the injury below the right eye noticed by the doctor was a contusion on the sole over first metatarsal bone with laceration. This could not have been the result of any kick or fist blow. As a matter of fact, in the FIR it was recorded that injury was caused on the foot with a stone, but while in the witness box, PW-1 Surinder Kumar did not say that any injury was caused on his foot by means of a stone. Further PW1 Surinder Kumar stated that it was his brother Kishori Lal, who lodged the report with the police and not he, but the FIR purports to have been lodged by him. The FIR itself has not been proved. Thus, the testimony of the injured is not corroborated even by the earliest version purportedly given by him to the police, which as per his own testimony, was given by his brother Kishsori Lal, who was not even on the spot.

6. It has come in the evidence that Kishori Lal, the brother of PW-1 Surinder Kumar, is the Pardhan of the Panchayat and he had contested election against one Ram Parkash. Respondents were the supporters of said Ram Parkash, per testimony of PW-2 Bhagi Rath. Injury on the face just below the eye, per deposition of PW-3 Dr. N.K. Sankhayan, could have been caused by means of a knife or as a result of

fall on some sharp edged piece of stone. The knife, allegedly used by respondent Anil Kumar, was not shown to this witness.

7. In view of the above stated position, I do not think the trial Court has committed any error in holding the view that the case does not stand proved beyond reasonable doubt. Hence, the appeal is dismissed.

November 21, 2007(ss) **(Surjit Singh), J**